

DANIEL T. DAVIS

IBLA 95-147

Decided February 3, 1998

Appeal of a decision by the Wyoming State Office, Bureau of Land Management, denying approval of a communitization agreement. SDR No. WY-95-02.

Affirmed as modified.

1. Oil and Gas Leases: Communitization Agreements

By regulation, a proposed communitization agreement shall be signed by or on behalf of all necessary parties. This term has been construed by BLM to require execution of the agreement by working interest owners in the lands. A decision rejecting a proposed communitization agreement signed by the operator on the ground that it was not executed by working interest owners in the lands will be affirmed when the record before BLM and the Board fails to support the operator's assertion that the working interest owners had signed an operating agreement giving the operator the authority to commit the working interest owners to the communitization agreement.

APPEARANCES: Daniel T. Davis, Esq., Laramie, Wyoming, pro se; Lyle K. Rising, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Daniel T. Davis (Davis) has appealed from a November 10, 1994, Decision of the Wyoming State Office, Bureau of Land Management (BLM), on State Director Review (SDR) No. WY-95-02 affirming an October 6, 1994, Decision of the Reservoir Management Team in the BLM Casper District Office (CDO). That Decision denied approval of the communitization agreement submitted by Appellant involving Federal oil and gas lease No. WYW114533, in which the working interest was held by Davis and others. The communitization agreement embraces an 80-acre drilling and spacing unit extending to the base of the Madison Formation in the Lite Butte Field, encompassing tracts 46-J and 46-K, sec. 35, T. 51 N., R. 92 W., Sixth Principal Meridian, Big Horn County, Wyoming.

On November 3, 1993, Davis filed a proposed communitization agreement with CDO for tracts 46-J (lease No. WYW56322A) and 46-K (lease No. WYW114533). On November 24, 1993, CDO returned the agreement unapproved citing several deficiencies, but noting in particular that Davis had not provided written consent of all interest owners.

On February 14, 1994, Davis Exploration filed amended copies of a communitization agreement with BLM, which included a copy of an Order by the Wyoming Oil and Gas Conservation Commission dated January 21, 1994, including tracts 46-J and 46-K in an 80-acre drilling and spacing unit for the Madison Formation in the Lite Butte Field. Davis also submitted a copy of a Sundry Notice filed with BLM on February 14, 1994, attaching a copy of the drilling and spacing order. 1/

By letter dated March 1, 1994, CDO again denied the application on the basis that "no signatures other than the operator's were received." The letter stated: "Owners of record title and working interest owners must execute the agreement and the signatures must be either witnessed or notarized."

On August 19, 1994, Davis resubmitted the communitization agreement with a date of November 1, 1993. An attachment to this application (exhibit B) shows the leases committed to the communitization agreement and the names of the working interest owners in the leased lands. According to exhibit B, States Exploration is designated as the lessee for tract 1 (tract 46-J, lease No. WYW56322A), and seven additional working interest owners are listed, with Daniel Davis holding the largest share of the working interest. Tract No. 2 (tract 46-K, lease No. WYW114533) is shown to be held by seven working interest owners, several of whom own working interests in both tracts. Daniel Davis also holds the largest share of the working interest in tract 2. Also attached with the proposed communitization agreement and its exhibits are a number of signatory pages, all of which state: "IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written and have set opposite their respective names the date of execution. Dated this 1st day of November, 1993." Signatory pages were signed by some, but not all of the working interest owners in the two tracts.

1/ On the face of the Sundry Notice, Davis asserted that pursuant to the inclusion of tracts 46-J and 46-K in the spacing unit for the Lite Butte Federal #3 well and the communitization agreement filed with BLM in November 1993, lease No. WYW114533 was now held by production from the well on tract 46-J (lease No. WYW56322A). "When a lease or a portion thereof cannot be independently developed in conformity with an established well-spacing order, the authorized officer may approve a communitization agreement under which the leased lands are communitized with other lands and "[o]perations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto." 43 C.F.R. § 3105.2-2.

On October 6, 1994, CDO issued a third Letter Decision disapproving the communitization agreement. That Letter Decision held that BLM was unable to approve the communitization agreement because "Lease WYW114533 expired on January 31, 1994." The Decision further explained:

43 CFR 3105.2-3 states in part, "The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such leases."

Although your application was received on November 4, 1993, which was prior to the expiration of lease WYW114533, it was not signed by or on behalf of all necessary parties. The communitization agreement was not in an approvable status on January 31, 1994. Therefore lease WYW114533 expired January 31, 1994.

The October 1994 Decision listed six working interest owners whose signatures were not received prior to January 31, 1994. In view of the expiration of lease No. WYW114533, Davis was requested to resubmit the communitization agreement showing signatures of all working interest owners of tract 1, and showing "tract 2, covering Tract 46-K [lease No. WYW114533] * * * as unleased."

On October 28, 1994, Davis filed a request for review of the October 6, 1994, CDO Decision with the Wyoming State Director. In his request for review, Davis admitted that the communitization agreement was not signed by all working interest owners, but maintained that the operating agreement authorizes the operator to bind the working interest owners in a communitization agreement. Appellant asserted that, under the circumstances his signature was all that was required under the regulation requiring "all necessary parties" to sign. 43 C.F.R. § 3105.2-3(a).

The State Director rejected this argument in his November 10, 1994, Decision on the basis that, since BLM is not a party to the operating agreement, the operating agreement cannot be held to require BLM to consent to the communitization agreement. The State Director noted that the relevant regulation regarding Federal approval of communitization agreements embracing Federal oil and gas leases requires the signature of "all necessary parties." 43 C.F.R. § 3105.2-3(a). The Decision further stated that the basis for construing "all necessary parties" to include all working interest owners is the BLM Manual § 3160-9, Appendix 1, Page 1, Part II.

Appendix 1 of the BLM Manual Subpart 3160-9 is entitled "Summary Information, Instructions, and Model Form of a Federal Communitization Agreement." Under Summary Information, Paragraph II, the manual requires that "[t]he operator of the communitized area and all owners of record title and working interests in Federal leases as reflected by current records must execute the agreement." The State Director concluded that, although the regulation at 43 C.F.R. § 3105.2-3(a) "does not define the

term 'necessary parties,'" BLM provided adequate notice to Davis of what it requires for approval of the communitization agreement in its Letter Decisions dated November 24, 1993, and March 1, 1994. The State Director therefore affirmed the October 6, 1994, CDO Decision denying approval of the communitization agreement filed by Davis.

In his Statement of Reasons (SOR) on appeal, Davis concedes that he filed a communitization agreement for tracts 46-J and 46-K without obtaining signatures of all the working interest owners. He contends, however, that "Davis had the power to pool or communitize all interests as he saw fit under the existing operating agreement between the working interest owners," which provides, in pertinent part: "C. The operator is given the power and the right at its option without further joinder of other working interest owners to pool and unitize the interest of all working interest owners in any of the lands described in this operating agreement." (Operating Agreement at Article XV.C.) According to Davis, while "43 CFR 3105.2-3(a) provides that all 'necessary' signatures will be on the application[,] * * * '[n]ecessary' must mean necessary to communitize. Since Davis had power to communitize, other signatures were not necessary." Davis maintains that BLM's internal guidelines cannot change "the contractual arrangement between Davis and the BLM." (SOR at 1-2.)

In its Answer, BLM reiterates the position taken by the State Director that "the operating agreement is a contractual agreement between the owners of oil and gas interests in the contract area." Since BLM was not a party to the operating agreement, "there is no contractual agreement between Davis and BLM." Concluding that BLM is thus not required to accept the signature of Davis on behalf of the working interest owners, BLM contends that CDO "provided Davis a clear interpretation of the cited regulatory reference (based on the BLM Manual § 3150-9 reference), and Davis twice failed to submit an amended [communitization agreement] in approvable form * * *." (Memorandum attached to BLM Answer at 1.) 2/

In further response to Davis' contention that the operating agreement between working interest owners renders only his signature on the communitization agreement necessary, BLM states that, prior to issuing its Decision, the CDO reviewed an operating agreement dated February 5, 1981, (which is the only operating agreement found in the record before the Board). It is the CDO's contention that the operating agreement fails to support Appellant's assertion that he had authority to commit the working interest owners to the communitization agreement because it does not show that the working interest owners in lease No. WYW114533 entered into an operating agreement authorizing the operator to communitize the

2/ The Answer of BLM in this case consists of a memorandum from the State Director to the Regional Solicitor explaining the basis for the BLM Decision below. Counsel for BLM has submitted this memorandum as the BLM Answer without providing any further analysis.

lease. Thus, BLM found the operating agreement does not apply to lease No. WYW114533, since that lease was issued effective February 1, 1989, and the 1981 operating agreement on its face referenced Federal lease No. WYW54730, an earlier (now expired) lease on tract 46-K.

Davis has responded to BLM's Answer, claiming that the issue of whether the current working interest owners are parties to the operating agreement was not an issue raised by BLM below. Davis asserts that he has documentation showing the operating agreement is effective for new leases and current owners, but this has not been provided. ^{3/}

[1] Departmental regulation 43 C.F.R. § 3105.2-3(a) provides that a proposed communitization agreement shall be signed "by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s)." While the regulation does not define the term "necessary party," BLM made it clear at the time of its March 1994 letter that it construes the term to embrace working interest owners in the lands. As noted by BLM on SDR, this is based on the relevant provision of the BLM Manual regarding communitization: "The operator of the communitized area and all owners of record title and working interests in Federal leases as reflected by current records must execute the agreement." (BLM Manual, § 3160-9-Communitization, Appendix 1 at ¶ II.A.) Although provisions of the BLM Manual are not generally promulgated as a regulation, with notice

^{3/} Appellant has neither provided this information to BLM nor to the Board in support of the communitization agreement. Accordingly, it is not a part of the record before the Board for review. To the extent that Appellant is arguing that this issue should be ignored because it was not stated as a ground of Decision below, Appellant misperceives the obligation of the Board on administrative review. It is well established that "[t]he Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review *de novo* all official actions and to decide appeals from such actions on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion. Act of March 3, 1849; 9 Stat. 395. The Secretary's inherent authority in this regard may not be diminished or constrained by those whose only authority derives from the delegated powers of the Secretary. Therefore, the scope of appellate review by or on behalf of the Secretary can be so limited only by the Secretary himself in a duly promulgated regulation, or by the Congress through enacted law. No such restraint on the scope of agency review has been imposed in cases such as this one. Therefore, the Board has a duty to consider and decide them 'as fully * * * as might the Secretary.' 43 C.F.R. § 4.1." United States Fish & Wildlife Service, 72 IBLA 218, 220-21 (1983) (footnote omitted).

to the public and opportunity to comment, and, hence, do not have the force and effect of law and are not binding on this Board, see Mobil Producing Texas & New Mexico, Inc., 115 IBLA 164 (1990); Pamela S. Crocker-Davis, 94 IBLA 328 (1986), where BLM adopts agency-wide procedures that are reasonable and consistent with the law, the Board will generally uphold their application. Beard Oil Co., 105 IBLA 285 (1988); see Mobil Producing Texas & New Mexico, Inc., 115 IBLA at 169 (standard of reasonableness applied on Board review). We find that the term necessary parties is reasonably construed to include the working interest holders as BLM has done in the Manual and in this case.

We are not prepared to say that an operating agreement could not confer authority on the operator to sign a communitization agreement "on behalf of" other necessary parties to a communitization agreement. See BLM Manual, § 3160-9.11.F (effects of State Orders). 4/ However, the record before us does not disclose that the working interest owners of lease No. WYW114533 have granted Davis this authority. The only operating agreement in the record before the Board indicates that, on February 5, 1981, the effective date of the agreement, Hanson Oil Corporation was the operator for a contract area which included the following Federal leases: lease Nos. W-54730, W-55510, W-64842-A, W-54730, W-55510, and W-56322. (Ex. A-1 to Feb. 5, 1981, Operating Agreement.) Tract 46-K, currently encompassed by lease No. WYW114533, is listed in the operating agreement under Federal lease No. W-54730; tract 46-J is listed under lease No. W-56322. The Answer of BLM states that the current lease embracing tract 46-K, lease No. WYW114533, was issued effective February 1, 1989, "almost eight years after the operating agreement was entered into." (BLM Answer at 2.)

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

4/ "[A] communitization agreement signed by the operator and complete in all respects, except for signatures of all working interest and royalty owners, may be accepted and approved by the authorized officer when a state order force-pooling such interests in the lands in question is also submitted."